UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KENNETH LEMOINE,	:	
Petitioner,	:	
	:	
v.	:	**Civ. No. 3:94cv1429 (AHN)**
	:	
LARRY MEACHUM,		:
Respondent.	:	

RULING ON PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

Petitioner Kenneth Lemoine, a Connecticut State prisoner, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he challenges his conviction for, among other offenses, sexual assault in the third degree pursuant to Connecticut General Statutes § 53a-72a(a)(1)(B). Lemoine was sentenced to an aggregate term of 14 years in prison. He now claims that the evidence was insufficient to allow the jury to conclude beyond a reasonable doubt that he threatened the victim with the use of force to compel sexual contact. As set forth below, Lemoine's petition [Dkt. #2] is denied.

I. PROCEDURAL HISTORY

In June 1992, a jury found Lemoine guilty of third-degree sexual assault pursuant to Conn. Gen. Stat. § 53a-72a(a)(1)(B), risk of injury to a child, and assault on a peace officer. He was acquitted of five other charges. The state court judge sentenced him to a total of fourteen years

in prison.

On direct appeal, Lemoine challenged the sufficiency of evidence for his conviction, but the Appellate Court of Connecticut affirmed the trial court's denial of relief. State v. Lemoine, 641 A.2d 131, 134-35 (Conn. App. Ct. 1994) ("Lemoine I"). The Connecticut Supreme Court rejected Lemoine's leave to appeal that claim, State v. Lemoine, 644 A.2d 918 (Conn. 1994) ("Lemoine II"), but reversed and remanded the case to the Appellate Court with instructions to resolve a remaining issue not pertinent to this petition, State v. Lemoine, 659 A.2d 1194 (Conn. 1995) ("Lemoine III"). On remand, the Appellate Court affirmed Lemoine's conviction. State v. Lemoine, 666 A.2d 825 (Conn. App. Ct. 1995) ("Lemoine IV").

Lemoine filed habeas petitions in State court as well as with this court. His federal petition, however, was stayed pending the outcome of the State court proceedings. In November 2002, Lemoine's state petition was denied, Lemoine v. Comm. of Correction, 808 A.2d 1194 (Conn. App. Ct. 2002) ("Lemoine V"), cert. denied, 815 A.2d 133 (Conn. 2003), and these proceedings were reopened.

II. DISCUSSION

In his instant habeas petition, Lemoine contends that the evidence was insufficient to warrant his conviction. He argues that the jury could not have found him guilty on the Second Count, sexual assault by the *threat* of use of force, because the jury did not find sufficient evidence to convict him on the First Count, sexual assault by the *actual* use of force. Although Lemoine disagrees with much of the testimony and evidence offered by the State at trial, he maintains that even assuming the veracity of the State's evidence, there was still insufficient proof that he threatened to inflict harm on the victim.

A. Exhaustion of Remedies

As a threshold matter, a petitioner seeking federal habeas review of a state court conviction under 28 U.S.C. § 2254(b)(1) must exhaust all available state court remedies before filing a federal petition. In other words, a petitioner must present his federal constitutional claim to the highest state court before a federal court may properly consider the petition. See Grey v. Hoke, 933 F.2d 117, 119 (2d Cir.1991). The state court must have been fairly apprised that the petitioner was raising a federal constitutional claim, and of the factual and legal premises underlying the claim. Id.

The court finds that Lemoine has satisfied this requirement. The record discloses that Lemoine adequately raised the sufficiency claim on direct appeal. (Tr. I, Appx. A, Petitioner's Brief at 8-13.) The Connecticut Appellate Court subsequently considered and rejected that claim, Lemoine I, 641 A.2d at 134-35, and the Connecticut Supreme Court denied his petition to appeal, Lemoine II, 644 A.2d 918. Although Lemoine did not explicitly cite or discuss federal constitutional law in those proceedings, sufficiency-of-evidence claims implicate due process pursuant to the Fourteenth Amendment. See Jackson v. Virginia, 443 U.S. 307, 317 (1979). Thus, this court finds that Lemoine "fairly presented" and exhausted his federal constitutional claim in the state proceedings.

B. Sufficiency of the Evidence

1. Standard

Under 28 U.S.C. § 2254, a defendant convicted in state court is entitled to habeas corpus relief if it is determined that, based on the record evidence adduced at trial, no rational trier of fact could have found proof of guilt beyond a reasonable doubt. Jackson, 433 U.S. at 324. When determining whether a state conviction is supported by sufficient evidence – that is, evidence that a reasonable mind

would accept as adequate to support a conclusion – a federal court must look to the applicable state law and draw all inferences in favor of the prosecution. See Fama v. Comm. of Correctional Serv., 235 F.3d 804, 811 (2d. Cir. 2000) (citing cases). In this case, the state law at issue is Conn. Gen. Stat. § 53a-72a(a)(1)(B), which states that third-degree sexual assault occurs when a person compels another to submit to sexual contact by the threat of use of force and causes the victim to have reason to fear physical injury.

2. Relevant Facts

The trial record shows that on June 20, 1991, Lemoine, the victim, the victim's mother, a family friend named Barbara Tirado, and Tirado's daughter all went to a lake for a day of swimming. (Tr. I, Appx. M, Victim's Testimony at 75-77.) Afterwards, they returned to Tirado's apartment. (Id. at 78.) Lemoine left the apartment at some point in the evening just when the victim's father arrived. (Tr. II, Appx. O, Petitioner's Testimony at 30.) At some time before midnight, the victim fell asleep on Tirado's living room couch. (Tr. I, Appx. M, Victim's Testimony at 78.) He was wearing a shirt, pants, and underwear. (Id. at 79.) Eventually, the victim's mother fell asleep in a different room. (Id. at 92.) Lemoine

returned to the apartment after midnight, and found Tirado and the victim's father still awake. (Tr. II, Appx. O, Petitioner's Testimony at 30-31.) All three went to sleep soon afterwards. (Id. at 33-34.)

The victim testified that Lemoine later woke him up and placed his hand between the victim's legs. (Tr. I, Appx. M, Victim's Testimony at 80.) Lemoine pulled down on the victim's pants, positioned himself behind the victim, and told the victim to be quiet. (Id. at 80 & 84.) The victim took off his pants and Lemoine again placed his hand between the victim's legs. (Id.) When the victim refused to remove his underwear, Lemoine used a pair of scissors to cut them off. (Id. at 85-86.) The victim became frightened, ran to where his mother was sleeping, and told her what had just occurred. (Id. at 91.)

3. Threat of Use of Force

While Lemoine's own testimony at trial differed dramatically from that of the victim (see Tr. II, Appx. O, Petitioner's Testimony at 34-36.), Lemoine argues that even if the victim's testimony were taken as true, there would still be insufficient evidence to show that Lemoine threatened him with the use of force. Lemoine contends that since the jury did not find that he actually used force to compel sexual

contact with the victim, it could not have found that he threatened the victim with the use of force.

The court rejects Lemoine's argument. Since Conn. Gen. Stat. § 53a-72a(a)(1)(B) does not explicitly define the term "threat," its common meaning applies. As Lemoine concedes, a threat is commonly understood to mean an indication or expression of an intent to inflict harm. See Tr. I, Appx. A, Petitioner's Brief at 9; Black's Law Dictionary 1489 (7th ed. 1999). It is self-evident, moreover, that a person could express an intention to use force without in fact doing so. For example, pointing a gun at someone without pulling the trigger is an act that threatens the use of force without actually using force.

In this case, the victim testified that Lemoine touched him between his legs; told him to be quiet; and when the victim refused to take off his underwear, cut it off using a pair of scissors. Although the jury did not find that Lemoine's actions constituted the use of force, it could have concluded from the evidence that Lemoine, by using a pair of scissors to cut off the victim's underwear, expressed an intent to take more violent action if the victim did not submit to being touched. Thus, the court finds that there was sufficient evidence to support the jury's verdict that, beyond

a reasonable doubt, Lemoine threatened the victim with the use of force.

4. Reasonable Fear of Personal Injury

In addition, Conn. Gen. Stat. § 53a-72a(a)(1)(B) states that the defendant's threat must put the victim in fear of physical injury and that it must be reasonable for the victim to have that fear. The victim in this case, an eight-year-old boy at the time of the incident, had never met Lemoine before that day. (Tr. II, Appx. O, Petitioner's Testimony at 28-29.) At trial, the victim testified that Lemoine's actions frightened him, which compelled him to run to his mother. The victim had been sleeping only to be awoken by a virtual stranger, who had placed his hand between the victim's legs, pulled on his pants, ordered him to be quiet, and then proceeded to use a pair of scissors to cut his underwear off. In light of these circumstances and the victim's age, this fear was certainly reasonable. These circumstances would put most adults in serious fear of physical injury, let alone a child of eight years. Accordingly, the court finds there was sufficient evidence to demonstrate that Lemoine's actions put the victim in fear of physical injury, and that it was reasonable for the victim to have felt that way.

III. CONCLUSION

For the foregoing reasons, plaintiff's petition for a writ of habeas corpus [Dkt. #2.] is DENIED.

So order this ___ day of September, 2003 at Bridgeport, Connecticut.

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Alan H. Nevas
Senior United States District Judge